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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 761,322	01 16 2001	Robert F. Gehan	NBI-855A	4644

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09 11 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/761,322

Applicant(s)

Gehan et al.

Examiner

Lien Tran

Art Unit

1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.204(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan. 16, 2001
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) _____ accepted or b) _____ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) _____ approved b) _____ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some* c) None of.
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____.
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachments

- 1) ☒ Notice of Patent As Filed (PFO) 692
- 2) ☒ Notice of Draftsperson's Patent Drawing Received (PDOR) 693
- 3) ☒ Notice of International Patent Application (IPA) 694

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1. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is vague and indefinite. What does applicant mean by "the confection, when partially removed at least partially fills in the recesses"? If the confection is removed, how can it fill the recesses? What does partially removed encompass?

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Blaschke et al disclose a ready-for-use cookie dough which is provided with score lines or grooves that define equally sized portions to be broken off and baked to form individual cookie. Each piece of the dough block is stamped on the top with a recognizable design or image such as an animal or geometric shape. (See col. 4 lines 40-45)

Blaschke et al do not disclose the image or design is formed by rotary molding, filled cookie form from two cookie bases and the designs as claimed.

It would have been obvious to one skilled in the art to use any known method to make the design in the Blaschke et al dough: printing of dough with rotary molding is known in the art as shown by the reference to Pappas et al submitted by applicant. It would also have been obvious to one skilled in the art to form a cookie from two cookie bases adhering to a layer of confection to form cookies having different flavor and taste; this type of sandwiching cookie is well known in the art. Confection cream containing fat and sugar is well known in the art as admitted by applicant in the specification. It would also have been obvious to put any type of design on the cookie base; this would have been a matter of preference. It would also have been obvious to partly cover the design with confection depending on the type of design wanted. For example, if the design is a picture of a clown, then it would have been obvious to put confection in different portion of the clown for decorative purpose. Blaschke et al disclose decoration in the form of icing can be put on the dough. Blaschke et al disclose a dough; it would have been obvious to

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Pappas et al disclose a process for printing baked goods such as cookies, crackers and snacks. The design is done by transfer rotary printing. (See col. 2)

Pappas et al do not filled cookie form from two cookie bases and the designs as claimed.

It would also have been obvious to one skilled in the art to form a cookie from two cookie bases adhering to a layer of confection to form cookies having different flavor and taste; this type of sandwiching cookie is well known in the art. Confection cream containing fat and sugar is well known in the art as admitted by applicant in the specification. It would also have been obvious to put any type of design on the cookie base; this would have been a matter of preference. It would also have been obvious to partly cover the design with confection depending on the type of design wanted. For example, if the design is a picture of a clown, then it would have been obvious to put confection in different portion of the clown for decorative purpose.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Oshima discloses pattern sheet to be place on cookie dough to form cookie with design on the surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding